No. 81-2147

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

THE STATE OF ARIZONA, ET AL.,
Petitioners,

versus

SAN CARLOS APACHE TRIBE OF ARIZONA AND THE NAVAJO TRIBE OF INDIANS, ET AL.,
Respondents.

PETITIONERS' REPLY MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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TABLE OF AUTHORITIES

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Little can be added to the obvious—and pressing—need for review by this Court of the decisions below. From a practical perspective, these decisions materially upset the on-going adjudications of water rights in the eleven western disclaimer states. See *Briefs of Amici State of Alaska, State of Idaho, State of Nevada, State of New Mexico, State of North Dakota, State of South Dakota, State of Utah, State of Washington and State of Wyoming.* From a legal perspective, the decisions below directly conflict with the Tenth Circuit's holding in *Jicarilla Apache Tribe v. United States*, 601 F.2d 1116, *cert denied*, 444 U.S. 995 (1979), and are, as the United States acknowledges, "arguably inconsistent" with this Court's decision in *Colorado*

River Water Conservation District v. United States, 424 U.S. 800 (1976). *Memorandum for the United States* at 7. Indeed, the United States, which is the guardian and trustee for the tribal respondents, has explained that:

> Since there are at least eleven States with similar disclaimers of jurisdiction over Indian property rights and they embrace the bulk of Indian Reservation acreage, the question is plainly one of recurring importance that ought to be resolved by this Court.

Id.

Each of the tribal respondents contends that the decisions below are not "ripe" for review because the Ninth Circuit remanded the cases for the district court to "determine if Arizona has properly asserted jurisdiction pursuant to Public Law 83-280." *Petition*, App. A-11. This argument is untenable, as the United States itself acknowledges:

> We share petitioners' view (81-2147 Pet. 11, 19, 20 and n.22) that the court of appeals inappropriately remanded the cases .... Like all other parties, we read Public Law 280 as expressly exempting Indian water rights from the optional assumption of jurisdiction pursuant to that statute.

Memorandum for the United States at 8 n.15. Petitioners have never contended below that Public Law 280 permitted state court adjudication of water rights claimed by the United States for Indian tribes because, as petitioners have already stressed, Public Law 280, by its very terms, is inapplicable to adjudications of water rights.* *Petition* at 19. Additionally, in *Colorado River Water Conservation District v. United States*, this Court expressly held that "[Public Law 280] does not purport to limit the special consent to jurisdiction given by the McCarran Amendment."

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*It is telling that not a single respondent argues that Public Law 280 permits Indian water rights to be adjudicated in a state court. Indeed, respondents concede that Public Law 280 does not apply to adjudications of Indian water rights, and compliance with Public Law 280 does not authorize adjudication of such rights in a state court.

424 U.S. at 812 n.20. In short, it is pointless for the district court to determine whether Arizona has complied with a law that is expressly inapplicable and which this Court has already held does *not* limit the special jurisdiction conferred by the McCarran Amendment. Clearly, the decisions below are ripe for review.

The decisions below hold, in direct conflict with the Tenth Circuit, that the disclaimer provisions bar state court adjudication of water rights claimed by the United States for Indian tribes. The decisions below hold, in direct conflict with this Court's admonition in *Colorado River*, that Indian water rights are excluded from the scope of the McCarran Amendment in the vast majority of the western states. In fact, as the United States recognized in its memorandum, the decisions below enervate the McCarran Amendment in the very region of the Nation where the problems of water rights adjudications necessitated its enactment in the first place. There is simply no reason for the Court to refrain from review of the erroneous disclaimer decisions below since, as the United States has recognized, "the momentum of the Court's past decisions carries the day against the disclaimer ruling below." *Memorandum for the United States* at 15-16.

The petition for a writ of certiorari to the Ninth Circuit Court of Appeals should be granted, and the decisions below should be summarily reversed.

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